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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 333

THEATRE CONTROL CORPORATION, a Michigan Corporation; SAUL KORMAN, d/b/a Apollo Theatre; WESTOWN THEATRE CORPORATION, a Michigan Corporation; HILLIER KILBRIDE Company, a Michigan Corporation, and all other members of the class,

Plaintiffs and Appellees,

and

ACF-WRIGLEY STORES, INC., a Delaware Corporation; DAVIDSON BROTHERS, INC., a Michigan Corporation; LOCAL 575, INTERNATIONAL BROTHERHOOD OF BRIDGE, STRUCTURAL AND STEEL WORKERS OF AMERICA, AFL-CIO,

Intervening Plaintiffs and Appellees,

v.

CITY OF DETROIT, a Municipal Corporation; BOARD OF WATER COMMISSIONERS of the City of Detroit; OSCAR A. WAGNER, Commissioner; GEORGE A. SHAFFER, Commissioner; ALFRED J. SIMPSON, Commissioner; HARVEY A. WAGNER, Commissioner; GERALD J. REMUS, General Manager of the Detroit Department of Water Supply,

Defendants and Appellants.

RESPONDENTS' ANSWER TO PETITIONER'S REPLY BRIEF

(For List of Attorneys see inside front cover)

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RESPONDENTS' ANSWER TO PETITIONER'S REPLY BRIEF

I.

The claim advanced in Petitioner's Reply Brief that

> "• • • the Supreme Court of Michigan held the demand charge for water service here involved illegal as a violation of due process *without specifying which constitution.*" (Italics ours.)

simply is not true. That Court made express reference to both the State and Federal Constitutions in a footnote, as appears on page 15 of Petitioner's original Petition, thereby ruling the demand charge, invalid under each.

II.

Petitioner seeks to distinguish *Central Savings Bank v. New York,* 279 N.Y. 266, 280 N.Y. 9, 18 N.E. 2nd 151, 19 N.E. 2d 659, 121 A.L.R. 607; 306 U.S. 661, 83 L. Ed. 1058, from the instant case by quoting language from *Minnesota v. National Tea Co.,* 309 U.S. 551, 84 L. Ed. 920. In the latter case a majority of the members of this Court were of the opinion that it was uncertain whether the Minnesota Court based its decision on the Minnesota Constitution or the U. S. Constitution. A minority of the Court (Justices Hughes, Stone and Roberts) dissented from that holding. But the entire court was in agreement that if the decision was based on the construction of the Minnesota Constitution the United States Supreme Court lacked jurisdiction to review the decision.

The majority opinion observes:

> "It is important that this Court not indulge in needless dissertation on Constitutional law. It is fundamental that said courts be left free and unfettered by us in interpreting their State Constitutions."

And Justice Hughes in the minority opinion observed:

> "The fact that provisions of the state and Federal Constitutions may be similar or even identical does not justify us in disturbing a judgment of a state court which adequately rests upon its application of the provision of its own constitution. * * * but the judgment of the state court upon the application of its own constitution remains a judgment which we are without jurisdiction to review."

On page 2 of its Reply Brief, Petitioner points out that the New York Court "has ruled that its own conception of due process governs, though the same phrase in the Federal Constitution may have been given different scope by decisions of this Court." New York is not alone on that respect. The Michigan Supreme Court took the same position as to the construction of a Michigan Statute by the United States Supreme Court. *Detroit Trust Co. v. Detroit City Service Co.*, 262 Mich. 14 at 36. And this Court has stated that it is bound by the Michigan Supreme Court's interpretation of the Michigan Constitution. *Re Murchison*, 349 U.S. 133 at 135, 99 L. Ed. 942 at 946.

III.

On page 3 of its Brief, Petitioner quotes a *dictum* from *Enterprise Irrig. District v. Farmers Mut. Canal Co.*; 243 U.S. 157 at 164, 61 L. Ed. 644 at 648 that "where the non-federal ground is so interwoven with the other as not to be an independent matter", the Supreme Court's jurisdiction is plain. Petitioner cites no facts and advances no argument to support any claim that in the instant case the Michigan Supreme Court decision upon a non-federal ground, is so interwoven with the federal ground as not to be an independent matter.

The Opinion of the Court, dismissing the *Enterprise Irrig. District* case for want of jurisdiction, stated the following rule, of long standing, equally applicable to the instant case.

> "Thus we are concerned with a judgment placed upon two grounds, one involving a Federal question and the other not. In such situations our jurisdiction is tested by inquiring whether the non-Federal ground is independent of the other and broad enough to sustain the judgment. Where this is the case, the judgment does not depend upon the decision of any Federal question and we have no power to disturb it."

Respectfully submitted,

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